



Your estate plan— where to begin

Identify your goals and gather needed information before you seek professional advice. Schedule a family meeting to begin shaping your objectives.

We usually take life for granted. Few of us choose to think about the cold reality of death. Nevertheless, you owe it to yourself and your family to plan how your property will be used after your death for the benefit of your loved ones, charitable interests, and other beneficiaries. The estate planning process begins with a series of questions that must be considered:

- Who will care for your minor children or aging parents?
- Will the family business be continued?
- If you own family land as farm or forest, does your family wish to keep it? Will they be able to do so?
- Will your spouse be able to live comfortably on what you leave behind?
- Will estate taxes consume your family's security?
- Are there other federal, state, or local taxes, or other expenses, that should concern you?

All of these concerns can be addressed with an estate plan. Each plan is unique to each family's needs and resources. Estate planning is for everyone, not just the elderly or rich. If you avoid planning your estate, you have unconsciously made some important choices. Your family will have to live with them.

Couples with young children who fail to plan their estates have chosen to have a court decide who will raise their children. Parents in a family business who fail to plan

their estates may impair the likelihood that their children will succeed in the business. The state law provides for the distribution of estates if you die without an estate plan in North Carolina. It is quite likely that the plan set out in state law is not what you want for your family, nor what they would likely choose.

People neglect their estates because "they don't have time" or they think it's "too expensive." But there is no time better spent than planning to protect your family's future. Moderate expense invested in professional assistance is insignificant next to the expense your estate could incur in litigation, taxation, and red tape. It's not all about money—family quarreling, confusion and hardship can and does occur when loved ones die without an estate plan. Many families fight and become estranged, even for generations, over the assets of poorly planned or unplanned estates.

FOR MORE INFORMATION

To learn about the impact of dying without a will, see *Where There Is a Will, There Is a Way* (AG-688-02) in the Estate Planning series.

What Is Estate Planning?

Estate planning involves a set of steps for effective management, enjoyment, and disposition of your property at the least possible cost, both in life and at death. Making a will is a crucial part, but planning doesn't stop there. Estate planning involves a review of your property ownership, insurance needs, and family business structure. This task can be simplified into five basic steps:

1. Begin the dialogue.

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2. Develop your objectives.
3. Compile information.
4. Seek the professional advice necessary to implement a plan.
5. Update documents as situations change.

People often complain that seeking professional advice costs too much. Expenses can be minimized if you initiate the first three steps in the process before the first meeting with your chosen professional. Time is valuable for attorneys, tax professionals, and other experts who are needed to successfully plan your estate. Take the initiative to conduct family discussions, set clear objectives, and compile the information that these key professionals will need before you employ them. This will save money.

Most of the money spent on estate planning often represents charges for resolving these initial issues. You can handle these things before your first meeting with a professional. If your family finds that its members cannot agree on key issues, you may wish to hire a mediator or other professional counselor.

1. Begin the Dialogue

Many estate plans never get written because death is a sensitive subject. Adult children don't want their parents to think they are greedy or controlling. Husbands and wives don't want to give the impression that they don't trust their spouses to look after them. And elderly parents often prefer not to think of old age and death at all. As one woman put it, "My father thinks that to make a will is calling it quits. After he draws it up, he may as well crawl away and die."

There is no easy way to begin a discussion on estate planning. One approach is to use this Estate Planning series as a springboard. Estate planning books, magazine articles, and seminars in your community also offer natural icebreakers. Often the bad experiences a family has when someone died without a good plan will start the family thinking.

Once you broach the topic of planning your estate, it should be easier to discuss concerns and goals. Tough choices often must be made. If you don't actively make decisions now, you abandon your right to decide. No one else can plan for your family like you can. Take a deep breath, and begin.

Each person's estate is his or her own, and there is no legal requirement that you discuss your plans with anyone else. It is prudent, however, to have these discussions with those most affected by your estate plan. If one of your objectives is maintaining the family farm or business and you do not discuss your plans with all family mem-

bers and other business associates, the farm or business could fail after your death.

Successful discussions do not begin over the dinner table or over the holidays because these times can be emotionally charged. Gather family members together in a neutral location at another time of year to begin this discussion. Consider the use of a professional counselor to help facilitate it. Some Extension centers are associated with farm transition networks or other nonprofit groups who can help with this process, often without charge or for only a modest fee.

2. Develop Your Objectives

Your objectives and goals for your estate are unique. Likewise, the objectives of your family members may be different from yours. You, the testator (the maker of the will), will ultimately create the will and make the estate decisions. Nevertheless, discussing your objectives and the desires of family members and business associates can reduce the likelihood of strife following your death.

Talk with your family, and list their objectives, concerns, and desires:

- Does your child expect to take over the family business?
- Do the other children feel apprehensive about being nudged out of the estate?
- Do your relatives feel comfortable being named guardians of your minor children?
- Does your spouse agree that your assets should be distributed to your children from your current or previous marriage?
- Does your spouse feel confident that he or she can manage the property after your death?

After you have a feel for your family's objectives, sit down and list your individual objectives. Rank your objectives in order of importance. Once your objectives are clear, your estate plan can be tailored to meet your particular needs.

Use Table 1 as a guide. It lists common objectives of estate planning. This is not a complete list. Estate planning objectives are as varied as the individuals who have estates to plan.

FOR MORE INFORMATION

A common objective of estate planning is to minimize estate taxes. *Federal and State Gift and Estate Taxes* (AG-688-03) in the Estate Planning series provides an overview of tax laws and their potential impact on your estate.

Less laudable objectives include using one's estate plan to manipulate friends, relatives, and business asso-

Table 1. Possible Estate Planning Objectives	
Objective	Importance
Provide security for your surviving spouse.	
Relieve your surviving spouse of management responsibilities.	
Provide management flexibility for your surviving spouse.	
Provide security for both spouses after retirement.	
Retire at a specified age (for example, 50, 60, or 70).	
Provide financial and physical security for an incapacitated heir.	
Keep a business in the family.	
Protect business associates and the business from adverse consequences of your death.	
Pay for the education of heirs.	
Assist heirs, including in-laws, to get started in business.	
Minimize estate and probate taxes on the estate of the spouse who dies first.	
Minimize estate and probate taxes on the estates of both spouses.	
Minimize other taxes, including income, property, and gift taxes that may adversely affect you, your business, or your heirs.	
Minimize expenses associated with settling an estate.	
Nominate guardians or designate trustees for minor children, or both.	
Nominate a guardian or draw up a durable power of attorney and nominate an agent in the event of your own disability.	
Plan for the financial consequences of your incapacity or disability.	
Nominate executor(s) of your estate.	
Provide for the payment of the estate's taxes, debts, and expenses.	
Provide equitable (although not necessarily equal) treatment of children.	
Transfer specific property to specific heirs or other beneficiaries.	
Transfer nontitled personal property of significant emotional value but little monetary value in a cost-effective manner that satisfies heirs.	
Make gifts to heirs and others during your lifetime.	
Reduce income taxes through disposal of income-producing property during your lifetime.	
Transfer property during your lifetime by means of an installment sale.	
Donate a scholarship to a favorite university.	
Provide for charitable bequests to your favorite charities or other organizations.	
Avoid the adverse consequences, such as a sense of entitlement and a lack of initiative, that the children of wealthy parents sometimes have.	
Avoid the transfer of property to undeserving children or other heirs.	
Use trusts to prevent financially irresponsible children from dissipating their inheritance.	
Provide for coordination between federal and state taxes to minimize the overall tax burden.	
Minimize the probate estate (assets that pass through probate).	
Provide for privacy of the family finances and the family business.	
Assure continuity of a farm, ranch, or other businesses.	
Review the current operation and ownership of the farm, ranch or other business, and restructure as needed to promote sound business management.	
Make advance decisions about end-of-life issues including whether to terminate life support, whether to use alternatives such as hospice care, and whether to use certain medical technologies.	
Nominate a health care agent to make health care decisions in the event of your incapacity.	
Make advance decisions about mental health treatment.	

ciates, or to take revenge. Be careful while planning your estate to avoid unforeseen consequences that may result in litigation over your estate after your death. If you fear your estate will be embroiled in controversy, seek advice from a counselor or legal adviser.

3. Compile Information

Gathering information for estate planning is critical. Organization is extremely helpful. The following information categories will help you start collecting and organizing the estate information that an attorney or a tax adviser needs. The list is very complete; don't let it worry you. Just gather readily available information that can make your initial meeting with your professional adviser(s) more productive.

Organize asset, debt, and real estate information into files for your initial professional meeting. Delays in finding and sharing information will waste time and cost you money.

Many attorneys, tax advisers, and financial advisers have their own forms that they will ask you to use when compiling this information prior to your initial meeting. Organizing and gathering information by the following categories can greatly facilitate that process.

Personal information. List everyone who has a legal right, or may believe that they have a legal right, to either part of your estate, your retirement, or other assets under a divorce settlement, divorce decree, or a premarital agreement. Copies of any divorce settlements or decrees and any premarital agreements from your current or earlier marriages should be included with this information. Make photocopies of your original documents to bring to your first meeting with a professional unless he or she specifically asks for originals.

Make a list of all family members. Include these names:

- Your children—adopted, natural, legitimate, and illegitimate. Though stepchildren may be excluded as beneficiaries in a will, information on them should be included in this list.
- Your grandchildren.
- Your spouse, your spouse's parents, and any ex-spouses.

Provide contact information for everyone on your family-member list, and include their birthdates, addresses, e-mail addresses, telephone numbers (including cell phone numbers), occupations, and Social Security numbers.

Any other relatives and friends who may play a role

in your estate plan as an heir, executor, guardian, agent under a durable power of attorney, or health care agent under a health care power of attorney should be included in a separate list. Provide addresses, e-mail addresses, and telephone numbers for everyone on this list. Indicate the role he or she will play in your estate plan.

If you have illegitimate children or paramours that are unknown to your spouse, you must make your attorney aware of them. This means that you cannot use the same attorney as your spouse to develop your estate plan. If you do so, that attorney must, under legal rules of ethics, reveal the names of any illegitimate children or paramours to your spouse.

Adults who cannot care for themselves represent especially challenging estate planning issues. Your personal information should include information about special needs children who may need help when they become adults. Also include information about parents or siblings who may need special provisions in your estate plan due to degenerative diseases or other conditions.

Bank accounts. Provide information for all bank and credit union accounts. Include the account number(s), the exact name(s) on each account, and the name and location of the branch at which you do business. You should also provide the name and contact information for any beneficiary named on each account. For joint accounts, describe the form of ownership used to the extent that you know it and include a copy of the signature card or other document under which the account was created. Your attorney can usually determine the form of ownership used from these documents.

Stocks and bonds. Include a description of all stocks and bonds, the years purchased, the number of shares or bonds, the exact name of the owner(s), the face value, the cost, and the name and contact information for the brokerage firm, if any, that holds the shares or the bonds on your behalf.

Life insurance. List each company, contact information for each, the policy number(s), the type of life insurance (such as term, universal life, whole life), the face amount, the cash value (if any), and the exact name(s) of owner(s), the insured(s), and the beneficiary(ies) of each policy.

Trusts. List the type, contact information for the trustee(s), by whom the trust established was and when, the exact name(s) of beneficiary(ies), the value, and the owner. You should also bring copies of supporting documents, including the trust document.

Personal or business loans owed to you. Describe moneys owed to you. Include the debt description, the year acquired, the value, and the person who owes you. Include copies of documents that provide evidence of or secure the debt.

Real estate. List the type of property and describe it. Include the acreage, its location (the town or rural road, state, and county where it is located), the year acquired, the purchase price and the cost of all improvements, the tax value, and your best estimate of current market value. Also provide the names of all owners in addition to you and their contact information. Bring copies of deeds and any survey maps that you have. Copies of deeds may be obtained from the land records office in the county where the property is located.

Personal property. List livestock, motor vehicles, machinery, crop inventory, home furnishings, jewelry, art, antiques, and personal items. Describe each item's cost and value, and include the names of any co-owners and their contact information. For titled personal property such as automobiles, a copy of the title should be included with the information brought to the initial meeting.

FOR MORE INFORMATION

To learn more about real and personal property and how ownership affects your estate, see *How Do You Own Your Property?* (AG-688-01) in the Estate Planning series.

Personal and business debts. Compile a list of all money that you owe to others. This list should include complete contact information for each creditor, the amount and terms of the debt, and the security, if any, for the debt.

For debt secured by your real property, include a copy of the note and the mortgage or deed of trust, in addition to the name of each creditor, the contact information for each, the due date of the debt (including periodic payments), and the remaining amount due. If your spouse or some other person is also liable for the debt, include that person's name and contact information.

If you have other debt attached to your real property, such as tax liens, judgment debt or workmen's liens, include all information to the extent known.

Information about all other personal liabilities, whether secured or unsecured, should be included. These may be credit card debt, unsecured notes, insurance loans, notes that you co-signed for children, unpaid real estate taxes, unpaid personal property taxes, unpaid state taxes (including income and inheritance taxes), unpaid federal taxes (including income and gift taxes), and unsettled claims (such as for automobile accidents).

Include the name of creditor and contact information, the date due (including periodic payments), and the amount remaining to be paid. Also designate which debts are insured by credit life insurance. Include the names of others, such as co-signers, who are also liable for payment of these debts.

Retirement benefits. List and describe all pensions, profit-sharing, deferred compensation, death benefits and Social Security benefits. Provide full contact information, the amount, and the terms for each account. A copy of the description provided to you by both the provider of each account or your employer should be included in the package of information for your initial professional meeting.

Also include the level of annual benefits, names of beneficiaries, and the age of eligibility or years of service needed. Many providers of pensions and related benefits, and some employer personnel offices, will provide a comprehensive analysis of benefits for you upon request.

Other financial information. Before meeting with your financial or legal advisor, summarize your income for previous year(s), your current income, including salary, retirement income, annuities, rents, interest, bonuses, dividends, trusts, and capital gains. Bring copies of income tax returns for at least the last three years to your first meeting with a lawyer or other professional.

Safekeeping: safety deposit boxes, safes and fireproof file cabinets. List and describe the locations where you keep your important papers. Include the exact location of your will (and your spouse's will, if married), deeds, insurance policies, certificates for stocks and bonds, financial statements, income tax returns for the last five years (longer if lengthy depreciation schedules are involved), gift tax returns, contracts, partnership, LLC and corporation agreements, profit sharing plans, divorce decrees and related documents, pre- and post-nuptial agreements, employment contract(s), and evidence of pension benefits.

4. Choose a Professional Adviser

Estate planning can be complex. Most people do not have time to develop the expertise needed to draw up a good estate plan and keep it current. That is why you should consider a team of professionals to help you. A life insurance agent, an accountant or tax adviser (or both), a trust officer, a financial planner, and an attorney are invaluable sources of information and advice.

When choosing a professional, take time to do the research necessary to be sure that you have selected the right person for you. Always independently verify credentials and references. Ask how a professional expects to be compensated. Generally professionals are compensated

on an hourly basis, by the job, or through commissions. Fees are usually negotiable. The larger your estate, the more negotiable planning fees are likely to be.

You should also ask how soon the professional will return your phone call. A professional who gives a vague answer or who does not stick to the schedule that they have given you is probably not a person with whom you wish to work. All of the professionals on your team must be able to work with each other. Finally, you should be comfortable with the professionals you select. Planning your estate is a very personal matter.

Life insurance agents can review your insurance coverage and help you organize information for your attorney and tax adviser. The agent will suggest ways to help you avoid liquidity (cash flow) problems upon your death. Of course, life insurance agents are usually compensated through commissions on the policies they sell, so you may need to shop around to ensure that you find the right policy at the right price. Nonetheless, price alone should not be the sole basis for purchasing life insurance; an agent with whom you are comfortable and with whom you work well will be worth the commissions paid.

Accountants or tax advisers are also knowledgeable of estate and other taxes. Accountants provide tax advice, as do some attorneys. Certified Public Accountants are accountants who are licensed by the N.C. State Board of CPA Examiners. Accountants or other tax advisers will help you figure the tax consequences of various types of transfers. They also can advise you about business or property management, valuation of assets, and business continuation or sale. They are usually compensated on an hourly basis.

Trust officers can suggest alternatives in choosing executors or setting up trusts. They also offer management and investment services. Trust officers may be attached to a bank trust department, or they may be independent. Trust officers are usually compensated based upon an annual percentage of the trust's principal. In general, the larger the trust, the lower the percentage that you can expect to pay. Most trust officers have a lower limit on the amount of money that they are willing to manage.

Financial planners review your entire financial situation and identify strategies to achieve your financial goals. They work with other professionals to develop your insurance, investment, retirement, and estate plans. Financial planners are compensated either on a fee basis or on a commission basis. The services of commission-

based financial planners may be quite valuable to you, but the scope of their advice may be limited by the products that they sell. Fee-based financial planners generally do not sell any products.

The attorney is a key member of the team. Attorneys coordinate the work and place the advice of other professionals in a legal context. Final decisions about your estate plan are made with your attorney's confidential assistance. The attorney then draws up the legal documents required.

For developing complex estate plans, attorneys are usually compensated on an hourly basis. When settling estates or serving as the executor of an estate, attorneys may be compensated based upon either a percentage of the estate, an hourly rate, or a fixed fee. When drafting wills and other documents for relatively small estates—such as those of middle-class wage earners with no complicating factors like children with special needs—attorneys may charge a fixed fee. Your agreement (called a retainer agreement) with your attorney should always be in writing.

Attorneys who do estate planning and handle matters in probate do not usually give tax advice or handle tax matters, and attorneys who provide tax advice and handle tax matters usually do not give advice about estate planning issues. The regulatory agency that regulates attorneys is the N.C. State Bar, which recognizes a specialty in Estate Planning and Probate Law. Admission to the specialty recognizes attorneys who have demonstrated special knowledge, skill, and proficiency in the field of Estate Planning and Probate Law.

While there are many attorneys who are not admitted to the specialty and who can provide adequate advice on estate planning, members of the specialty have demonstrated an additional level of experience. Whether to choose a member of the specialty is a personal decision that depends in part on the complexity of your estate.

5. Update Documents

Suppose you drew up your will and “put things in order” several years ago? How often should you update your estate plan? Although you may change your will whenever you wish, there are three basic reasons to consider updating your will: A change in your life occurs, a change in the law occurs, or you change your mind.

You should review your will periodically to see if it needs updating. Events that may trigger the need to update your will include the following.

- Marriage or divorce.
- Birth of children or grandchildren.

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- Death of a loved one.
 - Move to a new state.
 - Major change in financial circumstances.
 - Changes in the law (taxes, estates, probate, trusts).
 - Beginning or ending a business.

Your professional team will be glad to help you review and modify your estate plan periodically to keep it current.

FOR MORE INFORMATION

It's often easier to make a new will that incorporates changes than to add a codicil to an existing will. See *Where There Is a Will, There Is a Way* (AG-688-02) in the Estate Planning series.

Conclusion

Planning for your children and family members after your death can be stressful, but it may be one of the most important decisions you will make.

Planning your estate requires your willingness to seek essential guidance and help from professionals. It requires time to gather essential information and coordinate with different professionals. It is in your best interest to begin outlining your objectives and planning how to follow through as soon as you can. If you have decided to initiate this process, consider scheduling a family meeting and getting some feedback to begin shaping your objectives.

References

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North Carolina Farm Transition Network

<http://www.ncftn.org>

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